HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case or not approved for reporting).

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 18/06 (M/S)

Manoj Kumar Jain

Vs

D.J. Dehradun and others

Approved for reporting.

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Not approved for reporting.

Date of decision 15th June 2006.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 18 (MS) OF 2006

Manoj Kumar Jain,
S/o Sri Beni Prasad Jain,
R/o 28 Foota Road,
Near Hydel Sub Station,
Vikas Nagar, Dehradun. .....Petitioner.

Versus

1. District Judge, Dehradun.
2. Civil Judge (S.D.)/Prescribed Authority/F.T.C. VI, Dehradun.
3. Sri Anand Prakash Nautiyal, S/o Sri Dwarika Prasad Nautiyal, R/o Village Prithwipur Khera, Vikasnagar, District-Dehradun. .....Respondents.

15th June, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri D. Barthwal, Advocate for the petitioner, Standing Counsel for the respondents no. 1 and 2 and Sri B.P. Nautiyal, Advocate for the respondent no.3.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned judgment/order dated 21.12.2005 and 12.08.2002, passed by the respondent nos. 1 and 2 respectively in R.C.A. No. 82 of 2002 and P.A. Case No. 14 of 2000 (Annexure No. 1 and 2 to the writ petition).

Briefly stated, landlord/respondent no. 3 filed an application under Section 21 (1) (a) of the U.P. Act No. XIII of 1972 being P.A. Case No. 14 of 2000 on 29.02.2000 before the respondent no. 2 stating therein that the opposite party is carrying on the shop of selling of fodder for cow and buffalos.

Petitioner has submitted that he is a peon in Bimawala School in Vikas Nagar, Dehradun and his income in insufficient to run the family as he is getting a salary of Rs. 3,600/-. The family of the landlord consists of self, wife and grown up sons.

Petitioner has submitted that his wife has obtained the diploma in tailoring in Dehradun. She is also handicapped from legs. The landlord want to settle his wife in the business of tailoring and the shop in question is the source for his wife to augment the income of the family members.

The petitioner filed a written statement, where he has denied all the averments contained in the aforesaid application and has stated the shop in question is the only livelihood for the petitioner.

Both the parties have filed their affidavits. In support of the case of the landlord his own affidavit, affidavit of Anand Prakash 41-Ka along with Khatauni, Sale certificate alongwith two photographs, affidavit of Smt. Rekha Nautiyal, photocopy of the Khatauni 21 Kha/8 and 9, Certificate issued by the C.M.O. Dehradun 21 Ka/10 and 11, Certificate issued by the C.M.O. 21 Ka/11, Photocopy of the certificate issued by the Chief Medical Officer 21 Ka/12, Marksheet issued in favour of Smt. Rekha Nautiyal by Hemwati Nandan Bahuguna University 21/14, certificate issued by the educational institution in favour of Smt. Rekha Nautiyal have been filed.

On behalf of the tenant, affidavit of Sri Manoj Kumar 16 Ka, affidavit of Sri Manoj Kumar 31 Ka, Khatauni 32 Ka, Khatauni 33 ka, photocopy of Khasra 34, Affidavit of Sri

Arvind Gupta 38 Ka, Affidavit of Collector Singh Yadav 39 Ka, Affidavit of Sri Manoj Kumar 54 Ka and another affidavit of Sri Manoj Kumar 52 Ka.

In the case of ***Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1 Supreme Court Cases 67,*** *it has been held:-*

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. [See-Prativa Devi (Smt.) v. T.V. Krishnan] In the case in hand the plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.

Following the decision of **Bega Begum (supra)**, *in the case of* **Joginder Pal vs. Naval Kishor Behal, 2002 Sc & FB, Rent Cases, 388**, *the apex Court has held as under:-*

5. In Malpe Vishwanath Acharya and Ors. V. State of Maharashtra and Anr. (1998) 2 SCC 1) this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenant is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a shortsighted parochial approach. Power to legislate socially progressive legislation is coupled with a responsibility to avoid

arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only intails miscarriage of justice but may also in constitutional invalidity.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan 1979 A.I.R. Sc page 272. Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta8 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords – both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.

30. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable for attributing an intention tothe legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord

would deem to be his own use and in the given facts and circumstances of a case the Court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of landlord to put the accommodation to suc use as he intends, away from leasing it out.

31. If we do not meaningly construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words, which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13(3)(a)(ii) of the Act.

32. (v). In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii)."

In the case of ***Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77,*** it has

been held that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of ***Prem Prakash Gupta*** (supra) is quoted as below:

"As observed by this Court in its decision in the case of ***Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387,*** *the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word" ……..*

In ***Smt. Prativa Devi v. t.V. Krishan, 1987 SCFBRC 242*** it has been held by the Apex Court that since the landlord has no legal right to occupy any of the shops, the findings of the Appellate Court therefore cannot be interfered. The findings of the Apex Court are given below:

"In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bonafide personal requirement of the demised premises under Section 14(1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances."

The Apex Court in ***G.C. Kapoor v. Nand Kumar Bhasin, 2001 (2) Allahabad Rent Cases Page No. 603*** *has relied upon* the judgment of Datta Laxman as well as Raghunath Pale and has come to the conclusion as under:-

"It is settled position of law that bona fide requirement means the requirement must be honest and not tainted with any obligue motive and is not a mere desire or wish. In

Dattaraya Laxman Kamble v. Abdul Rasual Moulali Kokunde and Another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt."

In view of the aforesaid facts and circumstance, I decide the point no. 3 in favour of the landlord. The need is bonafide.

From the perusal of the documents available on the record it appears that the petitioner has not made any effort to search out alternative accommodation and as the landlord as well as his wife is handicapped, they are not in position to go elsewhere to start the business and the bona fide need goes in favour of the landlord/respondent no.3.

4. Comparative Hardship

So far as the comparative hardship is concerned, the wife of the landlord being a handicapped lady, there is no place for him to run a business. The evidence on the record shows that there is no other accommodation available to her to run the business although the house of the petitioner is at a distance of 100 metres from the property in dispute.

Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of ***Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301.*** After relying upon the judgment of ***Rajendra Kumar Gupta Vs.Gopal Krishan and other, A.I.R. 1995 Allahabad 82,*** it has been held that suitable alternative accommodation, which may become available on an effort being

made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

> *"A suitable alternative accommodation which may become available on an effort being made in that directing is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fact of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time,*
>
> *the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did is M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."*

In the case of ***Shushila v. IInd Additional District Judge, Banda and others reported in 2003 (1) A.I.R. Page 256,*** *it has been held as under:-*

"A bare perusal of rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause 9b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant.

Further there being no material on record to indicate that the petitioners have made any effort to search out the accommodation during the pendency of the case. This factor also goes against the petitioners.

In the case of ***Bhagwan Das v. Smt. Jiley Kaur andothers reported in 1991 (1) A.R.C. Page 377,*** the Apex Court has held as under:-

"Thirdly, it was a case where was even this additional circumstances that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get. In Mst. Bega Begum v. Abdul Ahad Khan, (1979) 1 SCC 273; 1986 SCFBRC 346 (SC), it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

The comparative hardship lies in favour of the landlord.

In view of the judgment of Apex Court reported in ***2004 ARC (3) 6892, Ranjeet Singh v. Ravi Prakash,*** the jurisdiction of the High Court under Article 226 is limited to the extent that the finding of fact recorded by the court below cannot be interfered. The two courts below have recorded concurrent findings and High Court cannot act like an appellate Court under Article 226/227 of the Constitution of India.

In ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** the Apex Court has held as under:-

"Supervisory jurisdiction under article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has

failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

"Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

" A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

" The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings if an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every

moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

" The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

" As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

In the case of ***M/s India Pipe Fitting Co. V. Fakruddin M.A. Baker and another reported in 1978 A.I.R. (S.C.) Page 45,*** the Apex Court has held as under:-

"The limitation of the High Court while exercision power under Art. 227 of the Constitution is well settled. Power under Art. 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however,

erroneous those may be. It is well settled and perhaps too late in the day to refer to the decisions of the Constitution Bench of this Court in ***Waryam Singh v. Amarnath 1954 SCR 565; (AIR 1954 SC 215)*** *where the principles have been clearly laid down as follows:-* ***(at p. 217 of AIR).***

"This power of superintendence conferred by Art. 227 is. As pointed out by Harries C.J., in ***Dalmia Jain Airways Ltd. V. Sukumar Mukherjee AIR 1951 Cal 193 (SB)*** *to be exercised most sparingly and only in appropriate cases in order to keep to Subordinate Courts within the boundary of their authority and not for correcting mere errors."*

In ***Piper v. Harvey [1958] 1 All E.R. Page 454***, it has been held as under:

"I have in mind what this court has said in Coplans v. King (1) [1947] 2 All E.R. 393] to the effect that the decision of the country court judge, when considering the balance of hardship, is to all intents and purposes final. It is not for the Court of Appeal to interfere when there is evidence on which the judge can reasonably come to the conclusion which he did."

In ***Whitley v. Whitey 1946 (2) All England Law Reports Annoted 726,*** it has been held as under:-

"In the present case the judge decided in favour of the land, and I can see no ground for saying that he did not arrive at his conclusion on the issue raised under para (h) on ample evidence. If there was any evidence to support his decision we cannot interfere with it. It is most important in these cases that this court should not interfere with findings of fact where there is evidence to support them."

CONCLUSION

Both the courts below having recorded the findings of fact by observing that the wife of the landlord being handicapped and obtained the diploma and is entitled to get the

accommodation released. It is well known that every one in the family is entitled for the job as the right of food.

In view of the above, I find no infirmity in the orders passed by the courts below while exercising the jurisdiction under Article 226/227 of the Constitution of India,

The petitioner has sought time to vacate the premises. The petitioner is allowed time upto 15th May, 2007 to vacate the premises provided:-

(a) he gives the undertaking by 30th August, 2006 to vacate the premises on or before 15th May, 2007.

(b) the petitioner pays the entire rent and damages due up to date by 30th of August, 2006.

(c) the petitioner pays regularly the damages by 1st week of every month.

(d) In case of failure of the aforesaid conditions, the respondent no.3/landlord shall be at liberty to execute the decree forthwith.

Consequently, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

15th June, 2006

Rathour